

REMARKS

After entry of this amendment, claims 1-27 remain pending. In the present Office Action, a restriction requirement was presented under 35 U.S.C. § 121. Two groups were identified: group I, claims 1-26; and group II, claim 27. Applicant respectfully elects, with traverse, group I, claims 1-26. Accordingly, claim 27 as shown above is in the withdrawn state.

Applicant respectfully submits that the restriction is not proper. First, the Examiner asserts that group I is drawn to a first computer system restoring data on the first computer system. Applicant respectfully disagrees. Group I includes computer medium claims and method claims that recite restoring data to the first computer system, but they do not require that the first computer system perform the restore. In group II, the first computer system is recited as performing the restore to the second computer system, but that is merely because the "first" computer system is listed first in the claim. The order (and labels) of the computer systems in claim 27 could be swapped without substantively changing the claim.

Furthermore, the restriction is stated as subcombinations usable together, as set forth in MPEP 806.05(d). However, such restriction is proper only if the examiner can show serious burden, such as separate classification, status, or field of search. See MPEP 806.05(d), fourth paragraph. The restriction requirement classifies groups I and II in the same class and subclass, so separate classification has not been shown. Section 4 of the present Office Action asserts a serious burden due to separate field of search, but does not identify the alleged separate field. The Office Action merely states that a separate field would be required, without explanation. Applicant respectfully submits that no serious burden has been established, and thus the restriction requirement should be rescinded.

CONCLUSION

Applicant submits that the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-20600/LJM.

Respectfully submitted,

/Lawrence J. Merkel/

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